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Deemed Exports Overview and the Inspector General's Report

Presentation for :

*Export Control Coordinator's Organization
U.S. Department of Energy*

Alex Lopes

**Director, Deemed Exports and Electronics Division
Office of National Security and
Technology Transfer Controls
Bureau of Industry and Security
U.S. Department of Commerce**



Overview

- Key Issues for Research Community – IG Report:
 - “Use”
 - Scope of Fundamental Research
 - Country of Origin
- BIS Efforts to address IG recommendations
- Deemed Export Snapshot 2005



Security Concern Regarding Deemed Exports:

- Deemed exports are an important part of the overall mission of BIS to control exports and reexports of sensitive U.S. technology to destinations of concern.
- Foreign governments may seek to gather sensitive technology in the United States.



Key Issues for Academic and Research Communities

- Use of controlled equipment versus controlled 'use' technology
- Scope of Fundamental Research
- Country of Origin



Clarification of “Use” technology

- The regulatory definition of “use” is technology for “operation, installation (including on-site installation), maintenance (checking), repair, overhaul and refurbishing.”
- The IG recommended the definition of controlled “use” technology be revised by changing “and” to “or” to clarify that a “use” technology control does not have to be related to all of these activities.



Clarification of “Use” technology

- The use of controlled equipment is not a deemed export. Deemed exports occur only if controlled technology is transferred.
- The term “technology” as used in the EAR refers to specific information “required” for the “development,” “production,” or “use” of specific product (e.g. computer, fermenter, machine tool, etc.).
- Refers only to that portion of technology which is peculiarly responsible for achieving or exceeding controlled performance levels, characteristics or functions.



Fundamental Research

- EAR 734.8 Information resulting from fundamental research:

“Fundamental research is basic and applied research in science and engineering where the resulting information is ordinarily published and shared broadly within the scientific community.”



Fundamental Research

- The fundamental research exemption applies to information that “arises during or results from” the research.
- There is no “blanket exemption” for all information that is transferred in the context of such research.



University/Research/Gov't Partnership

- To safeguard U.S. national security and protect fundamental research, agencies and the research community must have a system that focuses carefully on sensitive technologies.
- Knowledge of the rule (not self-blinding) means due diligence which includes the establishment of a process for identification, review, and classification.
- BIS stands ready to assist with commodity classification of any technologies and applying these rules.



Country of Origin

IG Recommendation:

- The IG recommended modifying the current policy of recognizing the foreign national's most recent country of permanent residency (non-U.S.) and citizenship (non-U.S.) for purposes of determining deemed export licensing requirements.
- This revision would **not apply** to naturalized U.S. citizens or foreign nationals that have achieved permanent resident status in the U.S. These citizens remain protected and exempt.



Commerce response to the March 2004 Inspector General Report

- BIS increased outreach with the government laboratories and research universities that were the subject of the IG's report.
- The Bureau will conduct approximately 100 deemed export outreach activities during FY2005. Since the fall, BIS conducted approximately 30 outreach activities to the academic community and government laboratories to explain the deemed export rule.
- BIS has partnered with the American Association of Universities (AAU) to create a task force to address specific issues raised by the academic community. The team is conducting site visits with universities.
- BIS is participating in a number of task forces including the Ad Hoc Interagency Group organized by the Office of Science and Technology Policy (OSTP) and the Government-University-Industry Research Roundtable (GUIRR) task force organized by the National Academies



Commerce response to the March 2004 Inspector General Report

- BIS is conducting internal training within the U.S. Government, e.g. with the Departments of Energy, Defense, Agriculture, FDA and NIH.



Federal Register Notice

- BIS published Advanced Notice of Proposed Rulemaking on March 28
(http://www.access.gpo.gov/bis/fedreg/ear_fedreg.html#70fr15607)
- Requesting public comment on three recommendations of the March 2004 IG Report:
 - Definition of “use” technology
 - Licensing policy for third country nationals based on country of birth.
 - Revision to Questions and Answers in Export Administration Regulations on fundamental research and government research
- Public comment period will last until May 27, 2005 which is 60 days from date of publication of the notice. (Extended 30 days to June 26, 2005)



Importance of Your Comments

- BIS seeks comments that are specific and, as much as possible, are based on factual information.
- For example, how would a change in the current definition of “use” technology impact the licensing and regulatory burden for your research laboratory? It would be useful for interested parties to provide quantitative estimates of the potential licensing and compliance impacts.

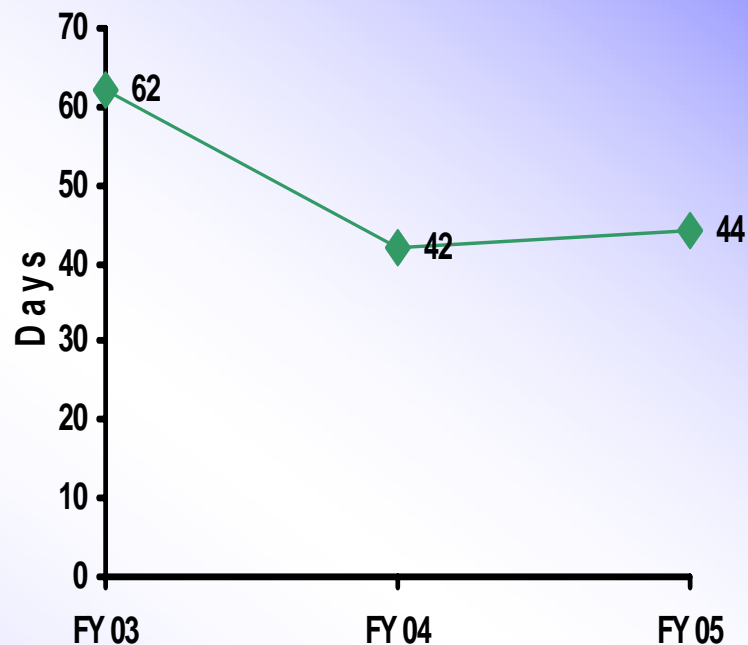
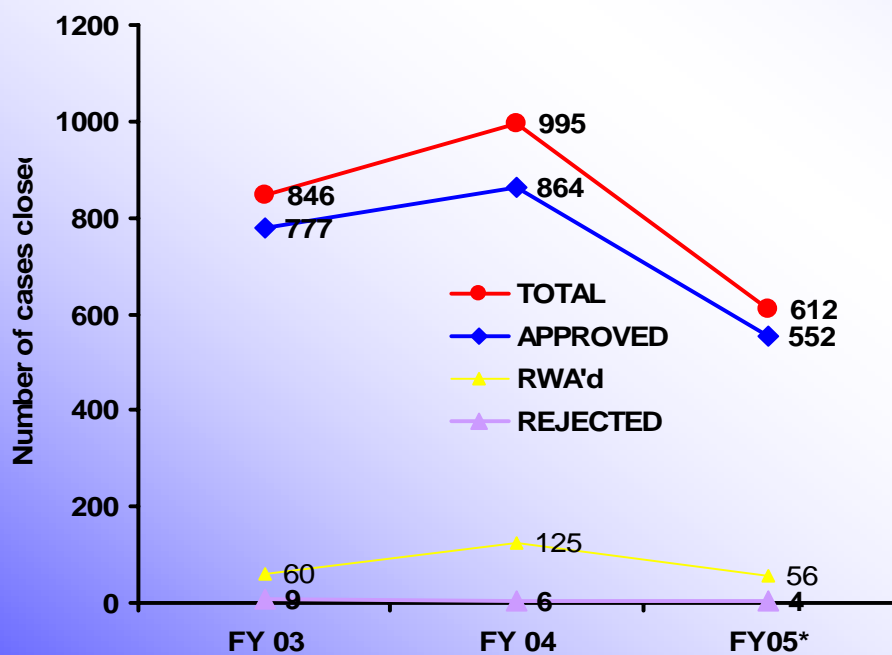


Importance of Your Comments

- On the issue of country of origin, it would be useful to provide comments on the following:
 - What would be the licensing impact of changing the current policy of recognizing foreign national's most recent country of permanent residency to the foreign national's country of birth?
 - To what extent would this result change your current level of export license applications for industry and research laboratories?
 - Would the change raise regulatory issues for the overseas operations of U.S. industry?



FY 2005 Deemed Export Licensing Data



*Projected FY2005 based on YTD 5/20/2005 totals

